

No. 89-1670

Supreme Court, U.S.

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In The

Supreme Court of the United States

October Term, 1989

GLORIA E. SOTO,

Petitioner,

v.

STATE OF NEW JERSEY, NEW JERSEY CASINO CONTROL
COMMISSION and DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondents.

*On Petition for a Writ of Certiorari to the Superior Court of
New Jersey, Appellate Division*

**BRIEF IN OPPOSITION FOR RESPONDENT NEW
JERSEY CASINO CONTROL COMMISSION**

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QUESTIONS PRESENTED

1. In order to achieve the undisputed compelling interests of closely regulating the historically troublesome casino industry, of preserving public confidence in the casino regulatory system, and of avoiding public suspicion that the electoral process and elected officials have been corrupted by casino industry funding, may the State of New Jersey ban contributions to political candidates and parties by casinos and by the top officials who direct these casinos?

2. Is the prohibition against political contributions unconstitutionally vague because it extends to contributions of a "thing of value" which, among other things, bans petitioner, an attorney, from providing uncompensated legal services to a campaign or political organization supporting candidates for election?

3. Has petitioner, a vice president of a casino company, been deprived of equal protection because officials of other less regulated and less volatile industries are not similarly prohibited from making political contributions?

TABLE OF CONTENTS

	<i>Page</i>
Questions Presented	i
Table of Contents	ii
Table of Citations	ii
Statement of the Case	2
Reasons for Denying the Writ:	
I. The statute imposes a reasonable restriction upon the activities of casinos and their high-level employees to prevent corruption or the appearance of corruption in the political processes of the State and to maintain public confidence in the casino regulatory system.	5
Conclusion	14

TABLE OF CITATIONS

Cases Cited:

Austin v. Michigan Chamber of Commerce, 110 S.Ct. 1391, 58 U.S.L.W. 4371 (1990)	7
Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L. Ed. 2d 830 (1973)	11

Contents

Page

Brown v. Hotel and Restaurant Employees and Bartenders, 468 U.S. 491, 104 S. Ct. 3179, 82 L. Ed. 2d 373 (1984)	5
Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)	6, 7, 8, 14
DeVeau v. Braided, 363 U.S. 144, 80 S. Ct. 1146, 4 L. Ed. 2d 1109 (1960)	5
Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 107 S. Ct. 612, 93 L. Ed. 2d 539 (1986)	7
Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, 105 S. Ct. 1459, 84 L. Ed. 2d 455 (1985)	6, 7
Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)	9
Greenberg v. Kimmelman, 99 N.J. 552, 494 A.2d 294 (1985)	13
Hackin v. State, 102 Ariz. 218, 427 P.2d 910, appeal dismissed, 389 U.S. 143, 88 S. Ct. 325, 19 L. Ed. 2d 347, reh'g denied, 389 U.S. 1060, 88 S. Ct. 766, 19 L. Ed. 2d 866 (1967)	10, 11
In re Martin, 90 N.J. 295, 447 A.2d 1290 (1982)	13
Knight v. Margate, 86 N.J. 374, 431 A.2d 833 (1981)	13

*Contents**Page*

Republican National Committee v. Federal Election Commission, 487 F. Supp. 280 (S.D.N.Y.), aff'd, 616 F.2d 1 (2 Cir.), aff'd, 445 U.S. 955, 100 S. Ct. 1639, 64 L. Ed. 2d 231 (1980).....	6
United States v. Girard, 601 F.2d 69 (2 Cir.), cert. denied, 444 U.S. 871, 100 S. Ct. 148, 62 L. Ed. 2d 96 (1979)	9
United States v. Harris, 347 U.S. 612, 74 S. Ct. 808, 98 L. Ed. 989 (1954)	10
United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973)	10, 12

Statutes Cited:

18 U.S.C.A. § 641 (West 1976)	9
N.J.S.A. 2A:170-78	10
N.J.S.A. 5:12-1, <i>et seq.</i>	5
N.J.S.A. 5:12-1(b)(6)	6
N.J.S.A. 5:12-9	2
N.J.S.A. 5:12-138	passim

United States Constitution Cited:

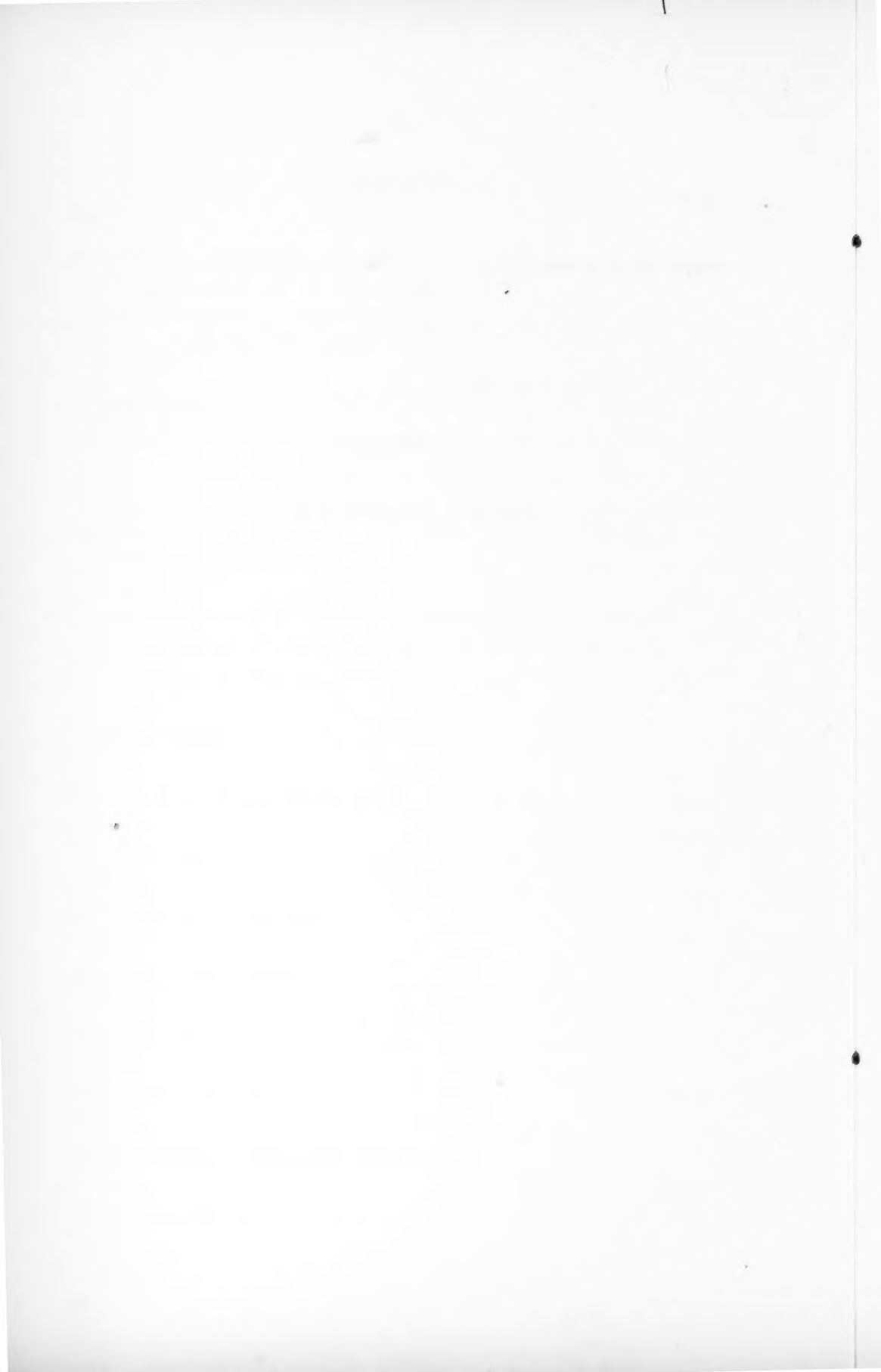
First Amendment	7, 11, 14
-----------------------	-----------

*Contents**Page***Other Authorities Cited:**

N.J. Const., Art. IV, § 7, ¶ 2D	5
N.J.A.C. 19:25-7.3 (1990)	13

APPENDIX

Appendix A — Relevant Constitutional Provisions and Statutes	1a
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v.

STATE OF NEW JERSEY, NEW JERSEY CASINO CONTROL
COMMISSION and DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING ENFORCEMENT,

Respondents.

*On Petition for a Writ of Certiorari to the Superior Court of
New Jersey, Appellate Division*

**BRIEF IN OPPOSITION FOR RESPONDENT NEW JERSEY
CASINO CONTROL COMMISSION**

The respondent, Casino Control Commission, respectfully requests that this Court deny the petition for the writ of certiorari seeking review of the judgment of the Superior Court of New Jersey, Appellate Division, which is reported at 236 N.J. Super. 303, 565 A.2d 1088 (1989) (Petition App. 2a to 38a).

STATEMENT OF THE CASE

Petitioner challenges the constitutionality of N.J.S.A 5:12-138 ("Section 138"), which prohibits licensed casinos in New Jersey, as well as their officers, directors and other high level employees, from contributing "any money or thing of value" to candidates for public office in the State or to any committee of a political party in the State, as well as groups or associations organized in support of such candidates or political parties. Petitioner serves in the position of Vice President, Compliance & Legal Affairs, for a corporation which holds a casino license. As such, she is both an officer and a "casino key employee"¹ of the casino, and subject to the statutory prohibition.

In 1985, when petitioner was working at another casino in the State as a casino key employee, she sought the opinion of respondent, the New Jersey Casino Control Commission ("Commission"), as to whether Section 138 would prohibit her from participating as a member of the State Platform Committee of a political party. The Commission requested additional information from petitioner about the Committee and the nature of the services she would perform as a member so that it could render an informed ruling. Shortly thereafter, petitioner advised the Commission that the work of the Committee had been completed, and that "the issue of whether I can participate on this Committee appears to be moot." However, she asked the Commission to address whether Section 138 would be implicated by her participation on a political party committee or as a delegate to a state party convention.

1. "Casino key employee" is a defined term in the Casino Control Act. It includes those who serve in a supervisory capacity or make discretionary decisions regarding the management of the casino hotel. N.J.S.A. 5:12-9 (Petition App. at 39a).

The Commission then requested petitioner to provide information on these other political activities. Petitioner failed to respond to this request. Instead, more than a year later, petitioner asked the Commission to declare Section 138 unconstitutional and therefore not applicable to *any* political activities in which she may participate.

The Commission advised petitioner that it lacked the jurisdiction to rule on the constitutionality of provisions in its enabling statute, but that it had the authority and remained ready to make a determination as to whether the activities in which she wished to participate were permitted under Section 138. The Commission again requested information about the nature of these activities so that it could make such a determination. Instead of providing the information, petitioner filed a complaint in the Chancery Division of the Superior Court of New Jersey seeking a declaratory judgment that Section 138 was unconstitutional in all of its possible applications to her.

The Chancery Judge found that a determination by the Commission of the scope and definition of "thing of value" as applied to petitioner's proposed activities would aid the court in ruling on the ultimate issues. He therefore referred the matter to the Commission for such a determination, and ordered the petitioner to provide the Commission with all information necessary for it to render its ruling. He also retained jurisdiction over the constitutional issues presented by the case.

After petitioner submitted the information describing the types of political activities in which she intended to participate, the Commission ruled that Section 138 did not prohibit her from being a member of political parties, committees, or organizations for the purpose of expressing ideas, engaging in debate on issues or candidates, or advocating the organization's objectives. However, the Commission did find that Section 138 prohibited petitioner

from being a member of a political organization which required an annual membership fee of \$1,000, which money was to be used to support the activities of the party and its candidates. In response to petitioner's representation that her membership in the Hispanic Democrats would include volunteering her services as an attorney, the Commission ruled that although her membership in the organization was permitted, the donation of professional legal services would be prohibited under Section 138 as a "thing of value." The matter was then returned to the Chancery Court, which considered petitioner's facial constitutional challenge. In an extensive oral opinion, the Chancery Judge declared Section 138 constitutional and granted respondents' motions to dismiss the complaint.

Petitioner appealed this decision as well as the decision of the Commission to the Appellate Division of the Superior Court. The appeals were consolidated, and the appellate court affirmed the Chancery Judge's decision and the ruling of the Commission. The appellate court issued a thorough written opinion in which it held that the State had the requisite compelling interests to justify the marginal restriction on political expression imposed by Section 138; that the statute was narrowly drawn to serve those interests; that the phrase "thing of value" was not unconstitutional either on its face or as applied by the Commission; and that the statute did not violate petitioner's right to the equal protection of the laws (Petition App. at 2a).

Petitioner filed a petition for certification requesting the New Jersey Supreme Court to review the decision of the appellate court. This petition was denied on January 23, 1990 (Petition App. at 1a).

REASONS FOR DENYING THE WRIT

I.

THE STATUTE IMPOSES A REASONABLE RESTRICTION UPON THE ACTIVITIES OF CASINOS AND THEIR HIGH-LEVEL EMPLOYEES TO PREVENT CORRUPTION OR THE APPEARANCE OF CORRUPTION IN THE POLITICAL PROCESSES OF THE STATE AND TO MAINTAIN PUBLIC CONFIDENCE IN THE CASINO REGULATORY SYSTEM.

In 1976, the citizens of New Jersey approved a referendum to amend the State Constitution and permit casino gambling in Atlantic City. N.J. Const., Art. IV, § 7, ¶ 2D (App. at 1a). Soon thereafter, the State Legislature adopted the Casino Control Act ("the Act"). N.J.S.A. 5:12-1 *et seq.* In recognition of casino gambling's historical lure to unsavory elements and its vulnerability to criminal misuse, the Act creates an extraordinarily comprehensive and strict regulatory scheme to control such gambling in New Jersey. This Court has itself recognized this strict regulatory scheme and has characterized it as a comprehensive program "designed to 'vindicate a legitimate and compelling state interest, namely, the interest in combating local crime infesting a particular industry.' " *Brown v. Hotel and Restaurant Employees and Bartenders*, 468 U.S. 491, 509, 104 S. Ct. 3179, 82 L. Ed. 2d 373 (1984) (quoting *DeVeau v. Braisted*, 363 U.S. 144, 155, 80 S. Ct. 1146, 4 L. Ed. 2d 1109 (1960)).

In order to further "public confidence and trust in the credibility and integrity of the regulatory process and of casino operations," the New Jersey Legislature stated that the regulatory provisions of the Act are "designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service

industries. . . .” N.J.S.A. 5:12-1(b)(6) (App. at 2a). The provision attacked by petitioner, N.J.S.A. 5:12-138 (“Section 138”), part of the original Act, seeks to maintain such public confidence and is plainly intended to prevent the corruption or appearance of corruption which can result from contributions by casinos to political candidates or parties. This Court has referred to such corruption as the “financial *quid pro quo* corruption: dollars for political favors,” and has acknowledged government’s compelling interest in preventing both the reality and appearance of such corruption. *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 497, 105 S. Ct. 1459, 84 L. Ed. 2d 455 (1985). Uniquely here, though, the feared corruption would threaten public trust not only in the political system but also in the regulatory system which is essential to the presence of gaming in New Jersey. Petitioner’s contentions must be viewed in this extraordinary context.

Petitioner’s first argument is that this Court’s opinion in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), requires that a prohibition of political contributions, as opposed to a limitation, must always be held invalid regardless of the state interest served. The New Jersey courts properly rejected such an overly simplistic interpretation of *Buckley*.² The real relevance of *Buckley* to this case is its finding that political contributions are afforded less constitutional protection than independent expenditures. As this Court later explained, “The Court concluded in *Buckley* that there was a fundamental constitutional difference between money spent to advertise one’s views and money contributed to be spent on his campaign.”

2. This Court has already affirmed an opinion which upheld a federal statute that effectively prohibited political contributions to a presidential candidate who chose to receive public funding. *Republican National Committee v. Federal Election Commission*, 487 F. Supp. 280 (S.D.N.Y.), *aff’d*, 616 F.2d 1 (2 Cir.), *aff’d*, 445 U.S. 955, 100 S. Ct. 1639, 64 L. Ed. 2d 231 (1980).

National Conservative Political Action Committee, supra, 470 U.S. at 497. Similarly, this Court also stated that, "We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-60, 107 S. Ct. 612, 93 L. Ed. 2d 539 (1986). See also, *Austin v. Michigan Chamber of Commerce*, 110 S. Ct. 1391, 1420-21, 58 U.S.L.W. 4371, 4385 (1990) (Kennedy, J., dissenting).

It is true that the *Buckley* Court acknowledged "the symbolic expression of support evidenced by a contribution" while noting that a contribution of some amount was still allowed under the provision there in question. *Buckley, supra*, 424 U.S. at 21. *Buckley* did not, however, say that a complete prohibition of political contributions could never be permitted. Even pure speech may be curtailed or prohibited if sufficiently strong interests are to be served. Petitioner's argument ignores this well accepted principle of First Amendment analysis. Moreover, it requires this Court to ponder the question whether the Constitution would be satisfied by a one cent limit which retained the "symbolic expression," but offended by a complete prohibition under identical circumstances. Petitioner's claim that such absolutism exists in the First Amendment only trivializes the Constitution and deserves no further attention by this Court. See Note 2, *supra*.

Significantly, Section 138 does not prevent petitioner from speaking out in support of or in opposition to political candidates or parties. Nor is she prohibited from making independent expenditures in favor of political candidates or parties. As interpreted by respondent Commission, Section 138 even permits petitioner to join and serve on political committees or in campaigns, as long as doing so does not require making a prohibited contribution.

Unlike the federal statute under review in *Buckley*, which was applicable to all citizens nationwide, Section 138 applies only to contributions by licensed casinos in New Jersey, as well as their officers and management employees. As such, Section 138 is narrowly tailored to prevent “financial *quid pro quo* corruption” or the appearance of such corruption by casinos. Given the tainted history of casino gambling, and the public’s continued wariness of that industry, the State of New Jersey is more than justified in restricting only the “symbolic expression” represented by a political contribution while permitting petitioner to engage in numerous other significant political activities.

The petitioner implies that the restriction of Section 138 is somehow more egregious because it applies to individuals as well as to casinos. However, the lower courts recognized that in order for the provision to be at all effective, it must extend to those natural persons who manage and establish the policies for the casinos. These individuals’ interests are properly identified with the casinos’ interests. The political contributions of such individuals cannot be separated, either in perception or reality, from those of the casinos for which they work. The compelling interest of the State can therefore only be served by including officers, managers, and high-level employees of the casinos, a group representing less than 4 percent of the casino workforce, within the statutory proscription.³

Petitioner also challenges Section 138 because it prohibits casinos and their high-level personnel from making political

3. Petitioner’s position also fails to recognize that a casino licensee need not be a corporate entity. Some casinos are partnerships which include natural persons as general partners. According to petitioner, such “individuals” would also have to be permitted to make monetary contributions. Can it seriously be argued that contributions by a general partner of a casino would be perceived as anything other than contributions of the casino?

contributions of a "thing of value." Petitioner's argument is that the phrase "thing of value" is unconstitutionally vague. The lower courts appropriately dismissed this challenge to Section 138 as well.

According to well established principles, a statute is unconstitutionally vague only if it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or to provide sufficient legislative standards to prevent arbitrary and discriminatory enforcement. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). There is no requirement that a statute provide absolute certainty to pass constitutional muster: "Condemned to words, we can never expect mathematical certainty from our language." *Grayned, supra*, 408 U.S. at 110.

Were Section 138 to prohibit one from making monetary contributions only, it would be easily circumvented. The prohibition must therefore be extended to contributions of a "thing of value," as well. There can be little doubt about the core conduct embraced by this provision.⁴ Clearly, it is intended to prevent contributions of tangible objects of worth, such as gold and securities, which are easily exchanged for money. In addition, it must apply to equipment and facilities such as telephones and office space, as well as intangibles, such as advertising time or space. A person of ordinary intelligence would easily recognize this and be guided accordingly. So, too, would the regulatory authorities responsible for interpreting and enforcing the provision.

This being so, Section 138 cannot be deemed unconstitutional simply because petitioner can imagine close cases where its reach

4. A federal statute uses almost identical language in prohibiting the conversion, theft or unauthorized sale of any "thing of value" of the United States. 18 U.S.C.A. § 641 (West 1976). This provision has been found not to be unconstitutionally vague. *United States v. Girard*, 601 F.2d 69 (2 Cir.), *cert. denied*, 444 U.S. 871, 100 S. Ct. 148, 62 L. Ed. 2d 96 (1979).

may be in question. As this Court stated in rejecting a vagueness attack upon several provisions of the Hatch Act: “[T]he general class of offenses to which . . . [the provisions are] directed is plainly within [their] terms, . . . [and they] will not be struck down as vague even though marginal cases could be put where doubt might arise.” *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 579, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973) (brackets and ellipses in original) (quoting *United States v. Harris*, 347 U.S. 612, 618, 74 S. Ct. 808, 98 L. Ed. 989 (1954)). Certainly, Section 138 is clear as to the “general class of offenses to which it is directed,” and therefore withstands petitioner’s facial vagueness challenge.

Petitioner, however, appears to argue that the Commission’s ruling that Section 138 prohibited her from donating professional legal services to a political organization exacerbates the provision’s constitutional deficiencies. In attacking this part of the Commission’s ruling, petitioner cites to language in the appellate court’s opinion about the difficulties in defining “professional services.” It is not necessary, however, as a matter of constitutional law, that petitioner receive an exhaustive definition of what constitutes professional legal services to save Section 138.

The appellate court correctly noted that, “Here, of course, we are concerned with plaintiff’s profession as an attorney” (App. at 30a). Professional legal services may be provided in New Jersey and most other jurisdictions only by those who are licensed to do so. One who performs legal services without this license does so at the risk of criminal sanctions. N.J.S.A. 2A:170-78 (App. at 3a). Surely it is not unreasonable for the State to expect a licensed attorney to be able to distinguish between professional legal services and other volunteer services provided to political candidates or parties. See *Hackin v. State*, 102 Ariz. 218, 427 P.2d 910, *appeal dismissed*, 389 U.S. 143, 88 S. Ct. 325, 19 L. Ed. 2d 347, *reh’g denied*, 389 U.S. 1060, 88 S. Ct. 766, 19 L.

Ed. 2d 866 (1967) (dismissing for want of a substantial federal question a vagueness challenge to state criminal prohibition against "the practice of law" by non-attorneys).

The petition asserts that as a result of the Commission's ruling, "the individual, already barred from making any monetary contribution, is effectively barred from performing volunteer work as well" (Petition at 13). Although the Commission never reached that question because petitioner only sought an opinion as to her legal services, the statute would not be infirm even if petitioner were correct. To prevent the leaders of the casino industry from giving valuable services to an election campaign, and from creating the impression that the campaign is being supported, or worse, orchestrated by the industry, would amply justify a ban against such involvement. Of course, the Commission expressly stated in its ruling that petitioner could become a member of a political party or party committee for the purpose of engaging in political debate, as distinguished from volunteering services otherwise available for a price from a disinterested supplier.

Petitioner cannot be heard to complain about any questions which may remain for others concerning the reach of Section 138. Her proposed activities have been addressed by the Commission more than adequately. There is nothing novel or important about a claim that a state statute, even one dealing with expressive conduct, will have to be refined through application to future cases. What this Court stated with regard to a similar challenge on First Amendment vagueness grounds is equally applicable here, "Moreover, even if the outermost boundaries of § 818 may be imprecise, any such uncertainty has little relevance here, where appellant's conduct falls squarely within the statute's proscriptions" *Broadrick v. Oklahoma*, 413 U.S. 601, 608, 93 S. Ct. 2908, 37 L.E. 2d 830 (1973).

Any remaining uncertainty concerning the scope of Section

138 is further minimized by the availability of the declaratory ruling procedure employed in this case. In upholding far more severe limitations on political expression by public employees, this Court said:

It is also important in this respect that the Commission has established a procedure by which an employee in doubt about the validity of a proposed course of conduct may seek and obtain advice from the Commission and thereby remove any doubt there may be as to the meaning of the law, at least insofar as the Commission itself is concerned. [*National Association of Letter Carriers, supra*, 413 U.S. at 580.]

In the present case, petitioner's request for guidance was delayed only because of her refusal to provide the salient facts about her planned activities. Petitioner finally produced this information in response to the order of the Chancery Judge, and the Commission rendered its ruling in less than a month's time. These same administrative procedures can be utilized by that small number of individuals whose proposed activities may fall within the fringe areas of Section 138's reach.

The New Jersey courts also properly rejected petitioner's argument that Section 138 goes too far by prohibiting contributions to any political party or candidate in the State. The concern that casino industry support for a candidate would threaten public confidence in the electoral process applies equally to any candidate for office in the State. While casino gaming in New Jersey is confined by the State Constitution to Atlantic City, the dangers and concerns posed by this unusual business are not. Further, even if the intent of the statute were only to protect against the appearance or fact that the industry could benefit from eased regulations or rulings by certain officials, the courts below properly

acknowledged the undeniable political reality that local elected officials and party leaders can wield influence far beyond the boundaries of their districts. They also recognized that monetary political contributions are fungible and may, in turn, be contributed elsewhere.⁵ Even where a monetary contribution is not passed on, or a contribution takes the form of some other "thing of value," such a contribution permits a political party to allocate its resources elsewhere, or could cause an opposing candidate or party to use resources to counter the effects of the contribution. In light of this, and the public's sensitivity to casino gambling's potentially corrupting influence, New Jersey was clearly justified in prohibiting contributions by casinos to any political candidate or party in the State.

Finally, the lower courts were correct to find no merit to petitioner's claim that Section 138 violated her constitutional right to the equal protection of the laws. To bolster this claim, petitioner attempted to portray casino gambling as being the same as other highly regulated industries, such as liquor sales and horseracing, which are not subject to similar prohibitions. The appellate court below categorically rejected this portrayal, citing the New Jersey judiciary's longstanding recognition of the State's compelling need to maintain strict regulatory control over casino gambling due to the unique dangers it poses. *See Greenberg v. Kimmelman*, 99 N.J. 552, 494 A.2d 294 (1985); *In re Martin*, 90 N.J. 295, 447 A.2d 1290 (1982); and *Knight v. Margate*, 86 N.J. 374, 431 A.2d 833 (1981). There is no reason to believe this issue was wrongly decided, much less that it is important or substantial enough to warrant review by this Court. Further, even if Section 138 impinged significantly on a fundamental right and the class of persons included, or excluded, were a suspect class, it is

5. New Jersey law permits candidates or parties to pass on funds which they receive as contributions to other candidates or party organizations. N.J.A.C. 19:25-7.3 (1990) (App. at 4a).

validated by the confluence of the same, powerful interests which easily overcome petitioner's First Amendment challenge.

CONCLUSION

Section 138 represents a reasonable and measured attempt by New Jersey to prevent corruption or the appearance of corruption of the State's political process by casinos. It is narrowly tailored to serve this compelling interest, since it only restricts casinos and high-level casino personnel from making political contributions. A mere limitation would not obviate the appearance or fact of corruption of the electoral process by casino money and influence. Moreover, casino entities and individuals remain free to endorse political candidates, join political parties and committees, and make unlimited independent expenditures.

The New Jersey courts correctly applied well established constitutional principles in dismissing petitioner's challenge. They appropriately rejected petitioner's simplistic argument that this Court's opinion in *Buckley* stands for the proposition that a prohibition of political contributions must always be held invalid, regardless of the compelling interest served. Their rejection of petitioner's vagueness and equal protection challenges was also well-reasoned and guided by this Court's numerous pronouncements in these areas.

Respondent, Casino Control Commission, therefore submits that the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX A — RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

New Jersey Constitution, Art. 4, § 7, ¶ 2.

No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election, except that, without any such submission or authorization:

* * *

D. It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing funding for reductions in property taxes, rental, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior

Appendix A

citizens and disabled residents, in accordance with such formulae as the Legislature shall by law provide. The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.

New Jersey Statute Annotated:**§ 5:12-1 Short title; declaration of policy and legislative findings**

(a) This act shall be known and may be cited as the "Casino Control Act."

(b) The Legislature hereby finds and declares to be the public policy of this State, the following:

* * *

(6) An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided. In addition, licensure of a limited number of casino establishments, with the

Appendix A

comprehensive law enforcement supervision attendant thereto, is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process.

New Jersey Statute Annotated**§ 2A:170-78 Practice of law limited to licensed attorneys or counselors at law**

Any person not licensed as an attorney or counselor at law, and any corporation that:

a. Engages in this state in the practice of law;
or

b. Holds himself or itself out to the public, either alone or together with, by or through any other person, whether such other person is so licensed or not, as engaging in or entitled to engage in the practice of law, or as rendering legal service or advice, or as furnishing attorneys or counsel in legal actions or proceedings of any nature; or

c. Assumes, uses or advertises the title of lawyer or attorney at law, or equivalent terms, in the English or any other language —

Is a disorderly person.

Appendix A

New Jersey Administrative Code:

§ 19:25-7.3 Transmittal of funds to another candidate, political committee, or continuing political committee

Funds received by contributions to a candidate, political committee, or continuing political committee may be transferred before or after deposit to another candidate, political committee, or continuing political committee for any lawful purpose of such other candidate or committee, provided there is no express or implied prohibition by the original contributor against such transmittal.